

Exhibit 2

1

5/17/2019 9:19 AM

Marilyn Burgess - District Clerk Harris County
Envelope No. 33652407
By: Nelson Cuero
Filed: 5/17/2019 9:19 AM

2019-34230 / Court: 113

CAUSE NO. _____

FIREPROTECTION SERVICE, INC.,

IN THE DISTRICT COURT

VS.

OF HARRIS COUNTY, TEXAS

SURVITEC SURVIVAL PRODUCTS, INC.
d/b/a SURVITEC GROUP

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE DISTRICT COURT JUDGE:

Plaintiff, FIRE PROTECTION SERVICE, INC. ("FPS" or "Plaintiff"), files its *Original Petition and Request for Disclosure*, complaining of the Defendant, SURVITEC SURVIVAL PRODUCTS, INC. d/b/a SURVITEC GROUP.

I. DISCOVERY PLAN

1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$100,000.

II. CLAIM FOR RELIEF

2.1 Plaintiff seeks monetary relief between \$100,000 and \$200,000.

III. PARTIES

3.1 Plaintiff FIRE PROTECTION SERVICE, INC. is a domestic corporation doing business in The State of Texas.

3.2 Defendant SURVITEC SURVIVAL PRODUCTS, INC. d/b/a SURVITEC GROUP ("Defendant") is a nonresident foreign corporation which engages in business in Texas, but does not maintain a regular place of business in this state; has not designated, and has not maintained, a

designated agent for service of process upon whom process may be served; and does not maintain a regular place of business in Texas. As such, and given that this is a proceeding that arises out of the business done in this state by this Defendant, and to which Defendant is a party, pursuant to Tex. Civ. Prac. & Rem. Code § 17.044(a) and/or (b), the Texas Secretary of State is an agent for service of process on this Defendant and Defendant may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701. Pursuant to TCPRC § 17.045(a) and (d), after being served with duplicate copies of process, the Texas Secretary of State shall immediately mail a copy of the process to this Defendant by registered mail or by certified mail, return receipt requested to its following home office address:

Survitec Survival Products, Inc. d/b/a Survitec Group
c/o its President
1420 Wolf Creek Trail
PO Box 585
Sharon Center, OH 44274-0585

****CITATION ISSUANCE AND SERVICE IS REQUESTED AT THIS TIME****

IV. VENUE

4.1 Venue is proper in Harris County, Texas pursuant to TCPRC §15.002(a)(1), as the county where all or a substantial part of the events or omissions giving rise to the claim occurred.

V. FACTS

5.1 Defendant is in the business of manufacturing marine safety and survival equipment, including life rafts. FPS was a dealer and servicer of Defendant's life rafts. After being acquired by another company, Defendant's new owners decided to go into the life raft servicing business in the geographical area serviced by FPS. Accordingly, Defendant terminated FPS as a dealer/servicer of Defendant's life rafts effective December 27, 2017. In conjunction with this termination, Defendant, recognizing its obligation under the laws of the State of Texas, represented

that it would repurchase FPS's inventory of Defendant's products. Despite this representation, Defendant failed to provide a return authorization or any details regarding the inventory repurchase. Several months passed with no word from Defendant regarding the promised repurchase of inventory, so in May 2018, FPS provided Defendant with an inventory count of Defendant's products in FPS's possession. FPS made numerous follow-up inquiries to Defendant over the next six months and was repeatedly assured that Defendant would honor its obligations. In December 2018, Defendant finally sent FPS a return authorization that was incomplete and replete with errors. FPS reconciled its inventory of Defendant's products to Defendant's records and even offered to allow Defendant to personally inspect the inventory. After repeated delays on Defendant's part, Defendant finally sent representatives to inspect the inventory. These representatives did not disagree with FPS's inventory count, condition or unit price. Defendant represented it would resolve the matter by the end of that week. Several weeks passed with no payment. FPS's recent repeated demands for repurchase payment for inventory it cannot sell due to Defendant's termination of FPS's dealership rights have been met, if at all, with further hollow promises of resolution. The undisputed cost of FPS's inventory of Defendant's products that Defendant is obligated to repurchase is \$158,134.25. FPS has made demand of Defendant for this amount, numerous times, to no avail.

VI. CAUSE OF ACTION – VIOLATION OF FAIR PRACTICES OF EQUIPMENT MANUFACTURERS, DISTRIBUTORS, WHOLESALEERS, AND DEALERS ACT

6.1 FPS is a Dealer as defined by The Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act ("Dealer Protection Act"), Tex. Bus. & Com. Code § 57.001 *et seq.* As such, FPS is afforded the protections of that act. The Dealer Protection Act requires, among other things, Suppliers, such as Defendant, to pay the Dealer, upon termination of a dealer agreement, for all the equipment and parts originally purchased from the Supplier. A Supplier

who refuses to repurchase any inventory covered under the Dealer Protection Act is liable for 110 percent of the amount that would have been due for the inventory had the Supplier complied with the requirements of the Dealer Protection Act, as well as freight charges, accrued interest at the maximum rate allowed by law, and actual costs of any court or arbitration proceeding incurred by the Dealer including attorney's fees. Defendant has violated the Dealer Protection Act, by, among other things, refusing to repurchase FPS's inventory of Defendant's products, despite being provided an inventory, Defendant's personal inspection of said inventory, and FPS's numerous demands for payment combined with Defendant's repeated, but false, assurances of that it would repurchase said inventory. Accordingly, FPS is entitled to the full remedies of the Dealer Protection Act.

VII. DAMAGES

7.1 As a result of Defendant's acts/inaction, FPS suffered damages for the amount paid for Defendant's inventory which FPS can no longer sell. Plaintiff seeks to recover actual damages in the amount of at least \$173,947.67, as well as accrued interest at the maximum rate allowed by law, and costs of court, including attorney's fees.

VIII. CONDITIONS PRECEDENT

8.1 All conditions precedent to filing this lawsuit have been met, satisfied, or waived.

IX. RULE 193.7 NOTICE

9.1 Pursuant to TRCP 193.7, Plaintiff gives notice to Defendant that any document produced may be used against the Defendant at any pre-trial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

X. REQUEST FOR DISCLOSURE

10.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is required to disclose, within fifty (50) days after service of this Request on them, the information or materials described in Rule 194.2 (a) through (l) of the Texas Rules of Civil Procedure.

WHEREFORE, Plaintiff prays that Defendant be served with citation and process, and be cited to answer and appear, and that on final trial or hearing, Plaintiff have judgment for actual damages against the Defendant in an amount in excess of the minimum jurisdictional limits of this Court, Plaintiff's costs of court and attorney's fees, plus prejudgment and post-judgment interest at the maximum rate allowed by law, and for such other and further relief, general and special, at law and in equity, to which Plaintiff may show it is justly entitled.

Respectfully submitted,



Scott Matney
State Bar No. 24010747
smatney@fps-usa.com
8050 Harrisburg Blvd.
Houston, Texas 77012
(713) 924-1600
Fax: (713)
ATTORNEY FOR PLAINTIFF

2

CAUSE NO. 201934230

RECEIPT NO. 75.00 CTM
***** TR # 73626224

PLAINTIFF: FIRE PROTECTION SERVICE INC
vs.
DEFENDANT: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC
GROUP)

In The 113th
Judicial District Court
of Harris County, Texas
113TH DISTRICT COURT
Houston, TX

THE STATE OF TEXAS
County of Harris

TO: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC GROUP) (A NONRESIDENT
FOREIGN CORPORATION) BY SERVING THE TEXAS SECRETARY OF STATE
1019 BRAZOS STREET AUSTIN TEXAS 78701
FORWARD TO C/O ITS PRESIDENT 1420 WOLF CREEK TRAIL

P O BOX 585 SHARON CENTER OH 44274 - 0585

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 17th day of May, 2019, in the above cited cause number
and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a
written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday
next following the expiration of 20 days after you were served this citation and petition,
a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 17th day of May, 2019, under my hand and
seal of said Court.

Issued at request of:
MATNEY, WILLIAM SCOTT
1800 WEST LOOP SOUTH SUITE 1750
HOUSTON, TX 77027
Tel: (713) 629-1800
Bar No.: 24010747



mail Buerg
MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM//11233252

CLERK'S RETURN BY MAILING

Came to hand the _____ day of _____, _____, and executed by
mailing to Defendant certified mail, return receipt requested, restricted delivery, a true
copy of this citation together with an attached copy of
PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE
to the following addressee at address:

(a) ADDRESSEE

ADDRESS

Service was executed in accordance with Rule 106
(2) TRCP, upon the Defendant as evidenced by the
return receipt incorporated herein and attached
hereto at

on _____ day of _____, _____
by U.S. Postal delivery to _____

This citation was not executed for the following
reason:

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy

RECORDED'S MEMORANDUM

This instrument is of poor quality
at the time of imaging.

73626224

CAUSE NO. 201934230

RECEIPT NO. 75.00 CTM

TR # 73626224

PLAINTIFF: FIRE PROTECTION SERVICE INC
vs.
DEFENDANT: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC
GROUP)

In The 113th
Judicial District Court
of Harris County, Texas
113TH DISTRICT COURT
Houston, TX

THE STATE OF TEXAS
County of Harris

CITATION (CERTIFIED)

TO: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC GROUP) (A NONRESIDENT
FOREIGN CORPORATION) BY SERVING THE TEXAS SECRETARY OF STATE
1019 BRAZOS STREET AUSTIN TEXAS 78701
FORWARD TO C/O ITS PRESIDENT 1420 WOLF CREEK TRAIL

P O BOX 585 SHARON CENTER OH 44274 - 0585

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seal of said Court.

Issued at request of:
MATNEY, WILLIAM SCOTT
1800 WEST LOOP SOUTH SUITE 1750
HOUSTON, TX 77027
Tel: (713) 629-1800
Bar No.: 24010747



Marilyn Burgess
MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM//11233252

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hereto at

on _____ day of _____, _____
by U.S. Postal delivery to _____

This citation was not executed for the following
reason: _____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy

3

Case Number: 2019-34230

Court: 113th

U.C. Do For

MARILYN BURGESS
HARRIS COUNTY DISTRICT CLERK
P.O. BOX 4651
HOUSTON, TX 77040-4651

ACCEIVED
MR

Certified Mail Fee \$ 3.50 MAY 22, 2019
Extra Services & Fees (check box, add fees as applicable)
 Return Receipt (Hardcopy) \$ 0.00
 Return Receipt (electronic) \$ 0.00
 Certified Mail Restricted Delivery \$ 0.00
 Adult Signature Required \$ 0.00
 Adult Signature Restricted Delivery \$ 0.00

Postage \$ 1.45
Total \$ 7.75

2019-34230
113th COURT

Sent To: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC GROUP)
Street: c/o Texas Secretary of State
City, St: 1019 Brazos Street
Austin, Texas 78701

PS Form 3552-1
Instructions



FILED

Marilyn Burgess
District Clerk

MAY 22 2019

Time: 12:50 Pm

By D. Patel
Deputy

5-22-19

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

**201934230 - FIRE PROTECTION SERVICE INC vs. SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC GROUP) (Court 113)**

Chronological Print
History All
(non-financial)

[Summary](#) [Appeals](#) [Cost Statements](#) [Transfers](#) [Post Trial Writs](#) [Abstracts](#) [Parties](#)
[Court Costs](#) [Judgments/Events](#) [Settings](#) [Services/Notices](#) [Court Registry](#) [Child Support](#) [Images](#)

* Note: Only non-confidential public civil/criminal documents are available to the Public. All non-confidential Civil documents are imaged. In Criminal Cases, select non-confidential documents are available in electronic format (not every document is available for electronic viewing and a document may be filed in the case that is not viewable electronically). If the case or Civil document you are looking for is not available and should be, please click here to notify Customer Service.

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Image No.	Type	Title	[Reset Sort]	Post Jdgmt	Date	Pages	Add Entire Case
85446910	Filing	Certified Mail Receipt			05/22/2019	1	Add to Basket
85299411	Filing	Plaintiff's Original Petition and Request for Disclosure			05/17/2019	5	Add to Watchlist
85349012	Filing	Certified mail tracking number (7018 2290 0001 3523 6520)			05/17/2019	2	Add to Basket

[WSS]

5

Counsel for Plaintiff:

Scott Matney
Fire Protection Service, Inc.
8050 Harrisburg Blvd.
Houston, TX 77012
713-924-9617
smatney@fps-usa.com

Counsel for Defendant:

Peter McLaughlan
Anacarolina Estaba
Foley Gardere
FOLEY & LARDNER
1000 Louisiana St., Suite 2000
Houston TX 77002
713-276-5500
pmclaughlan@foley.com
aestaba@foley.com

6/14/2019 12:02 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 34384208
By: SASHA PRINCE
Filed: 6/14/2019 12:02 PM

CAUSE NO. 2019-34230

FIRE PROTECTION SERVICE, INC., § IN THE DISTRICT COURT OF
§
§
vs. § HARRIS COUNTY, T E X A S
§
SURVITEC SURVIVAL PRODUCTS, INC. §
d/b/a SURVITEC GROUP § 113st JUDICIAL DISTRICT

**SURVITEC'S NOTICE OF FILING OF
NOTICE OF REMOVAL TO FEDERAL COURT**

PLEASE TAKE NOTICE that on June 14, 2019, Defendant Survitec Survival Products, Inc. d/b/a Survitec Group ("Survitec") filed a Notice of Removal, removing this action from the 113th Judicial District Court Harris County, Texas to the United States District Court for the Southern District of Texas. A copy of the Notice of Removal is attached as **Exhibit 1**.

Pursuant to 28 U.S.C. § 1446, the filing of this Notice of Removal, a copy of which is being served on Plaintiff Fire Protection Service, Inc. effects the removal of this action. This Court may proceed no further unless and until the case is remanded by the United States District Court for the Southern District of Texas.

Respectfully submitted,

FOLEY GARDERE
Foley Lardner LLP

By: s/ Peter A. McLauchlan

Peter A. McLauchlan
Texas Bar No.: 13740900
Anacarolina Estaba
Texas Bar No.: 24085298
1000 Louisiana, Suite 2000
Houston, Texas 77002
Telephone: (713) 276-5500
Fax: (713) 276-5555
pmclauchlan@foley.com
aestaba@foley.com

ATTORNEYS FOR DEFENDANT
SURVITEC SURVIVAL PRODUCTS, INC.
D/B/A SURVITEC GROUP

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2019, a true and correct copy of the above and foregoing document has been served electronically through the electronic filing manager in accordance with Texas Rule of Civil Procedure 21(a):

Scott Matney
8050 Harrisburg Blvd.
Houston, Texas 77012
(713) 924-1600
Email: somatney@fps-usa.com

/s/ Peter A. McLauchlan
Peter A. McLauchlan

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FIRE PROTECTION SERVICE, INC.

Plaintiff

§
§
§
§
§
§
§
§

v.

Civil Action No. _____

SURVITEC SURVIVAL PRODUCTS, INC.
d/b/a SURVITEC GROUP,

Defendant

§
§
§
§
§
§

DEFENDANT SURVITEC SURVIVAL PRODUCTS, INC.'S NOTICE OF REMOVAL

Defendant Survitec Survival Products, Inc. d/b/a Survitec Group (“Survitec”) hereby removes this action from the 113th Judicial District Court of Harris County, Texas to this Court pursuant to and in accordance with 28 U.S.C. §§ 1332, 1441, and 1446. As grounds for this removal, Survitec states as follows:

I. FACTS

1. Plaintiff Fire Protection Services, Inc. (“FPS”) commenced a civil action against Survitec in the 113th Judicial District Court of Harris County, Texas, and served a copy of Plaintiffs’ Original Petition and Request for Disclosure (the “Petition”) on Survitec through the Texas Secretary of State on or about May 17, 2019. To date, Survitec has failed to receive service by the Secretary of State of Texas. An Index of State Court Documents Filed with Defendant’s Notice of Removal is attached hereto as **Exhibit 1**.

2. The Petition alleges that Survitec violated the Texas Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act (the “FPA”), TEX. BUS. & COMM.

CODE § 57.001 *et seq.*, by failing to repurchase equipment from FPS after terminating the parties' distribution agreement.

3. The Petition alleges Plaintiff is a domestic corporation doing business in Texas (*See* Petition, at ¶ 3.1), with a principal place of business in 8050 Harrisburg Blvd., Houston, Texas, 77012. Accordingly, Survitec is informed and believes that Plaintiff was a citizen of the State of Texas at the time its Petition was filed and served and that Plaintiff continues to be a citizen of the State of Texas as of the filing of this Notice of Removal.

4. The Petition alleges that Survitec is a nonresident foreign corporation which engages in business in Texas, but does not maintain a regular place of business in this state. *See* Petition, at ¶ 3.2. Survitec is a Delaware corporation with a principal place of business in 11070 Cabot Commerce Circle, Bld. 3, Suite 100, Jacksonville, Florida 32226. Therefore, there is complete diversity between the parties as they are citizens of different States. 28 U.S.C. §§ 1332(a)(1), 1446(c).

5. The Petition sets out that the amount in controversy is "the amount of at least \$173,947.67, as well as accrued interest at the maximum rate allowed by law, and costs of court, including attorney's fees." *See* Petition, at ¶ 7.1. Therefore, the amount in controversy exceeds \$75,000. 28 U.S.C. § 1446(c)(2)(A)(ii).

6. No previous removal of this case has been attempted or effected.

II. PAPERS FROM REMOVED ACTION

7. As required by 28 U.S.C. § 1446(a), Survitec has attached copies of the Petition as well as all other process or pleadings, currently on file with the 113th Judicial District Court of Harris County. *See Exhibit 2.* No other process or pleadings have been served upon Survitec in this action.

8. Plaintiff did not request a jury trial.
9. No further proceedings have occurred in the state court action.

III. TIMELINESS OF REMOVAL

10. This Notice of Removal is timely because it is filed within thirty (30) days after service of the Petition on Survitec, in accordance with 28 U.S.C. § 1446(b)(1).

IV. VENUE

11. Venue of this removal is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division encompassing the state court where the action is pending.

V. NOTICE OF FILING OF NOTICE OF REMOVAL

12. In accordance with 28 U.S.C. § 1446(d), and to effect removal, Survitec will file a true and correct copy of this Notice of Removal with the Clerk of the 113th Judicial District Court of Harris County, Texas.

VI. CONCLUSION

WHEREFORE, Defendant Survitec Survival Products, Inc. d/b/a Survitec Group respectfully removes this action from the 113th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Dated: June 14, 2019.

Respectfully submitted,

FOLEY GARDERE
Foley Lardner LLP

By: /s/ Peter A. McLauchlan

Peter A. McLauchlan
Federal I.D. No.: 6370
Texas Bar No.: 13740900
Anacarolina Estaba
Federal I.D. No.: 964979
Texas Bar No.: 24085298
1000 Louisiana, Suite 2000
Houston, Texas 77002
Telephone: (713) 276-5500
Fax: (713) 276-5555
pmclauchlan@foley.com
aestaba@foley.com

ATTORNEYS FOR DEFENDANT
SURVITEC SURVIVAL PRODUCTS, INC.
D/B/A SURVITEC GROUP

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2019, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record as set forth below, via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically a Notice of Electronic Filing.

Scott Matney
8050 Harrisburg Blvd.
Houston, Texas 77012
(713) 924-1600
Email: smatney@fps-usa.com

/s/ Peter A. McLauchlan
Peter A. McLauchlan

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FIRE PROTECTION SERVICE, INC.

Plaintiff

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v.

Civil Action No. _____

SURVITEC SURVIVAL PRODUCTS, INC.
d/b/a SURVITEC GROUP,

Defendant

INDEX

Number	Document Description
1	Plaintiff's Original Petition and Request for Disclosure
2	Certified Mail Tracking Number (7018 2290 0001 3523 6520)
3	Certified Mail Receipt

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IN THE DISTRICT COURT

VS.

OF HARRIS COUNTY, TEXAS

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d/b/a SURVITEC GROUP

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE DISTRICT COURT JUDGE:

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1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$100,000.

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3.1 Plaintiff FIRE PROTECTION SERVICE, INC. is a domestic corporation doing business in The State of Texas.

3.2 Defendant SURVITEC SURVIVAL PRODUCTS, INC. d/b/a SURVITEC GROUP ("Defendant") is a nonresident foreign corporation which engages in business in Texas, but does not maintain a regular place of business in this state; has not designated, and has not maintained, a

designated agent for service of process upon whom process may be served; and does not maintain a regular place of business in Texas. As such, and given that this is a proceeding that arises out of the business done in this state by this Defendant, and to which Defendant is a party, pursuant to Tex. Civ. Prac. & Rem. Code § 17.044(a) and/or (b), the Texas Secretary of State is an agent for service of process on this Defendant and Defendant may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701. Pursuant to TCPRC § 17.045(a) and (d), after being served with duplicate copies of process, the Texas Secretary of State shall immediately mail a copy of the process to this Defendant by registered mail or by certified mail, return receipt requested to its following home office address:

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c/o its President
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Sharon Center, OH 44274-0585

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5.1. Defendant is in the business of manufacturing marine safety and survival equipment, including life rafts. FPS was a dealer and servicer of Defendant's life rafts. After being acquired by another company, Defendant's new owners decided to go into the life raft servicing business in the geographical area serviced by FPS. Accordingly, Defendant terminated FPS as a dealer/servicer of Defendant's life rafts effective December 27, 2017. In conjunction with this termination, Defendant, recognizing its obligation under the laws of the State of Texas, represented

that it would repurchase FPS's inventory of Defendant's products. Despite this representation, Defendant failed to provide a return authorization or any details regarding the inventory repurchase. Several months passed with no word from Defendant regarding the promised repurchase of inventory, so in May 2018, FPS provided Defendant with an inventory count of Defendant's products in FPS's possession. FPS made numerous follow-up inquiries to Defendant over the next six months and was repeatedly assured that Defendant would honor its obligations. In December 2018, Defendant finally sent FPS a return authorization that was incomplete and replete with errors. FPS reconciled its inventory of Defendant's products to Defendant's records and even offered to allow Defendant to personally inspect the inventory. After repeated delays on Defendant's part, Defendant finally sent representatives to inspect the inventory. These representatives did not disagree with FPS's inventory count, condition or unit price. Defendant represented it would resolve the matter by the end of that week. Several weeks passed with no payment. FPS's recent repeated demands for repurchase payment for inventory it cannot sell due to Defendant's termination of FPS's dealership rights have been met, if at all, with further hollow promises of resolution. The undisputed cost of FPS's inventory of Defendant's products that Defendant is obligated to repurchase is \$158,134.25. FPS has made demand of Defendant for this amount, numerous times, to no avail.

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6.1 FPS is a Dealer as defined by The Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act ("Dealer Protection Act"), Tex. Bus. & Com. Code § 57.001 *et seq.* As such, FPS is afforded the protections of that act. The Dealer Protection Act requires, among other things, Suppliers, such as Defendant, to pay the Dealer, upon termination of a dealer agreement, for all the equipment and parts originally purchased from the Supplier.¹ A Supplier

who refuses to repurchase any inventory covered under the Dealer Protection Act is liable for 110 percent of the amount that would have been due for the inventory had the Supplier complied with the requirements of the Dealer Protection Act, as well as freight charges, accrued interest at the maximum rate allowed by law, and actual costs of any court or arbitration proceeding incurred by the Dealer including attorney's fees. Defendant has violated the Dealer Protection Act, by, among other things, refusing to repurchase FPS's inventory of Defendant's products, despite being provided an inventory, Defendant's personal inspection of said inventory, and FPS's numerous demands for payment combined with Defendant's repeated, but false, assurances of that it would repurchase said inventory. Accordingly, FPS is entitled to the full remedies of the Dealer Protection Act.

VII. DAMAGES

7.1 As a result of Defendant's acts/inaction, FPS suffered damages for the amount paid for Defendant's inventory which FPS can no longer sell. Plaintiff seeks to recover actual damages in the amount of at least \$1,73,947.67, as well as accrued interest at the maximum rate allowed by law, and costs of court, including attorney's fees.

VIII. CONDITIONS PRECEDENT

8.1 All conditions precedent to filing this lawsuit have been met, satisfied, or waived.

IX. RULE 193.7 NOTICE

9.1 Pursuant to TRCP 193.7, Plaintiff gives notice to Defendant that any document produced may be used against the Defendant at any pre-trial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

X. REQUEST FOR DISCLOSURE

10.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is required to disclose, within fifty (50) days after service of this Request on them, the information or materials described in Rule 194.2 (a) through (l) of the Texas Rules of Civil Procedure:

WHEREFORE, Plaintiff prays that Defendant be served with citation and process, and be cited to answer and appear, and that on final trial or hearing, Plaintiff have judgment for actual damages against the Defendant in an amount in excess of the minimum jurisdictional limits of this Court, Plaintiff's costs of court and attorney's fees, plus prejudgment and post-judgment interest at the maximum rate allowed by law, and for such other and further relief, general and special, at law and in equity, to which Plaintiff may show it is justly entitled.

Respectfully submitted,

Scott Matney
State Bar No. 24010747
smatney@fps-usa.com
8050 Harrisburg Blvd.
Houston, Texas 77012
(713) 924-1600
Fax: (713)
ATTORNEY FOR PLAINTIFF

701B 2290 0001 3523 6520

MS
7/2
CAUSE NO. 201934230

RECEIPT NO.

75.00

LTM

TR # 73626224

PLAINTIFF: FIRE PROTECTION SERVICE INC
vs.
DEFENDANT: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC
GROUP)

In The 113th
Judicial District Court
of Harris County, Texas
113TH DISTRICT COURT
Houston, TX

CITATION (CERTIFIED)

THE STATE OF TEXAS
County of Harris

TO: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC GROUP) (A NONRESIDENT
FOREIGN CORPORATION) BY SERVING THE TEXAS SECRETARY OF STATE
1019 BRAZOS STREET AUSTIN TEXAS 78701
FORWARD TO C/O ITS PRESIDENT 1420 WOLF CREEK TRAIL

P O BOX 585 SHARON CENTER OH 44274 - 0585

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 17th day of May, 2019, in the above cited cause number
and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a
written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday
next following the expiration of 20 days after you were served this citation and petition,
a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 17th day of May, 2019, under my hand and
seal of said Court.

Issued at request of:
MATNEY, WILLIAM SCOTT
1800 WEST LOOP SOUTH SUITE 1750
HOUSTON, TX 77027
Tel: (713) 629-1800
Bar No.: 24010747



MR. BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM/11233252

CLERK'S RETURN BY MAILING

Came to hand the _____ day of _____, _____, and executed by
mailing to Defendant certified mail, return receipt requested, restricted delivery, a true
copy of this citation together with an attached copy of
PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE
to the following addressee at address:

ADDRESS

(a) ADDRESSEE

Service was executed in accordance with Rule 106
(2) TRCP, upon the Defendant as evidenced by the
return receipt incorporated herein and attached
hereto at

on _____ day of _____, _____
by U.S. Postal delivery to _____

This citation was not executed for the following
reason: _____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy

RECORDED'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

73626224

N.LNT/17H.P

7018 2290 0001 3523 6520

CAUSE NO. 201934230

RECEIPT NO. 75.00 CTM

 TR # 73626224

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 vs.
 DEFENDANT: SURVITEC SURVIVAL PRODUCTS INC (D/B/A SURVITEC
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 1800 WEST LOOP SOUTH SUITE 1750
 HOUSTON, TX 77027
 Tel: (713) 629-1800
Bar No.: 24010747



Marilyn Burgess
 MARILYN BURGESS, District Clerk
 Harris County, Texas
 201 Caroline, Houston, Texas 77002
 (P.O. Box 4651, Houston, Texas 77210)

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 hereto at

on _____ day of _____, _____
 by U.S. Postal delivery to _____

This citation was not executed for the following
 reason: _____

MARILYN BURGESS, District Clerk
 Harris County, TEXAS

By _____, Deputy

Case Number: 2019-34230

Court: 113th



FILED

Marilyn Burgess
District Clerk

MAY 22 2019

Time: 12:50 PM
By D. Patel
Harris County, Texas
Deputy

5.22.19

RECORDER'S MEMORANDUM